

*lit.*

BEFORE THE SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

HARRY KETTERING,	)	
	)	
Appellant,	)	SHB NO. 89-10
	)	
v.	)	
	)	FINAL FINDINGS OF FACT,
SAN JUAN COUNTY,	)	CONCLUSIONS OF LAW
	)	AND ORDER
Respondent.	)	

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On February 22, 1989, Dr. Harry Kettering filed an appeal with the Shorelines Hearings Board contesting San Juan County's denial of his application for a substantial development permit to expand his single family dock. The Attorney General and the Department of Ecology certified the request for review on March 20, 1989.

A hearing on the merits was held on August 10, 1989 in the Town of Friday Harbor, Washington. The Board members and the parties made a site visit just prior to the hearing. Board members present at the hearing were: Harold S. Zimmerman, Presiding; Judith A. Bendor, Chair; Nancy Burnett; and William Derry. Member Gordon Crandall has

1 reviewed the record. Appellant Dr. Harry Kettering was present and  
2 represented by his attorney, Tom Bigsby of Bigsby and Willson  
3 (Everett, Washington). Respondent San Juan County was represented by  
4 Deputy Prosecuting Attorney Scott Wessel-Estes. Court reporter  
5 Rebecca Winters of Evergreen Court Reporting recorded the proceedings.

6 Witnesses were sworn and testified. Exhibits were admitted and  
7 examined. Argument was made. Having reviewed the evidence and  
8 counsel's contentions, and having deliberated, the Shorelines Hearings  
9 Board makes these

#### 10 FINDINGS OF FACT

##### 11 I

12 Appellant Dr. Harry Kettering owns a residence on two lots on  
13 Friday Island (aka Brown Island; "The Island"). Since June 1989, he  
14 and his wife have lived there year-round. The lots are part of a  
15 subdivision of single-family lots which is known as Friday Island  
16 Estates. This subdivision covers the Island entirely. Each lot has  
17 both waterfront access and access to a gravel road. The Island is  
18 just across the water from the Town of Friday Harbor (on San Juan  
19 Island), accessible by row boat.

20 Dr. Kettering's lots are approximately 300 feet by water from a  
21 community dock, and 1/4 mile away from the dock by land via the gravel  
22 road.

23 No motor vehicles are allowed on the Island except for a fire  
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25  
26 FINAL FINDINGS OF FACT,  
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1 truck and the Estates' caretaker vehicle. Travel on the Island is by  
2 foot, bicycle or golf cart. Access to the Island is by boat. There  
3 is no public ferry service, but the caretaker does provide a "taxi  
4 service". Dr. Kettering and his wife go to Friday Harbor several  
5 times a day for shopping and other activities.

## 6 II

7 In 1981 Friday Island Estates received a shorelines substantial  
8 development permit to expand the community dock. Approval of the  
9 permit was based on the findings that the expansion would "supply the  
10 moorage needs of the island as new homes are built and demand for  
11 space increases," and that the expansion would "preclude the need for  
12 individual docks to serve lot owners." The community dock expansion  
13 was completed except for the construction of six deep-keel moorage  
14 spaces. The community dock has had, and continues to have moorage  
15 space available. It is available to anyone on a first come, first  
16 serve basis.

17 Since this 1981 shoreline permit, the County has not approved any  
18 private, single family docks on the Island.

## 19 III

20 The Island's shoreline is currently in a largely natural state,  
21 with few private single family docks. It is largely free of the  
22 "porcupine effect" which is caused by the proliferation of docks.  
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IV

Dr. Kettering currently has a dock which is reached by stairs from his house. This dock consists of a float at the bottom of the stairs, to which a variety of small boats are moored, including a row boat, an inflatable boat, and two motor boats. (His 35 foot sail boat is not moored there.) Dr. Kettering also has a mooring buoy in the deep water located between his dock and the community dock. During minus tides, the float is grounded, at which times the Ketterings cannot leave from or arrive at this float.

V

Dr. Kettering applied to San Juan County on October 10, 1988, to allow an extension 25 feet waterward from the current float. The extension would be supported by two new pilings. With this change, appellant would have water access from and to his dock during all tides.

On January 10, 1989, San Juan County denied his substantial development permit application. Dr. Kettering appealed to this Board, which became SHB No. 89-10.

VI

Since the permit denial, Dr. Kettering has installed a path from his house to the Island's gravel road. This allows him and his family to access the community dock by a golf cart should one be acquired. Other residents on the Island use carts. A golf cart is a feasible and reasonable transportation solution. The proposed extension would

1 make the existing dock more convenient, but it is not necessary for  
2 water access to his residence.

3 VII

4 No probative evidence was presented that the dock's total cost or  
5 fair market value, whichever was higher, was less than or equal to  
6 \$2,500.

7 VIII

8 Any Conclusion of Law deemed to be a Finding of Fact, is hereby  
9 adopted as such. From these Findings of Fact, the Board makes these  
10 following

11 CONCLUSIONS OF LAW

12 I

13 The Shorelines Hearings Board has jurisdiction over the parties  
14 and subject matter of this action. RCW 90.58.180. Appellant has the  
15 burden of proof. RCW 90.58.140(7).

16 II

17 The Shoreline Management Act, Chapt. 90.58 RCW ("SMA"), provides  
18 that a current substantial development permit shall issue when the  
19 proposed development is consistent with the applicable master program  
20 and the provisions of the SMA. RCW 90.58.140(2)(b).

21 III

22 Appellant did not establish that the project was exempt from the  
23 requirements to obtain a substantial development permit.  
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25  
26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER

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1 (2.) It contravenes Section 16.40.302 Policy 1, and Section  
2 16.40.508 Policy 6, by placing convenience ahead of the public's  
3 long-term goal of avoiding the "porcupine effect".

4 (3.) It is inconsistent with Section 16.40.508's Policy 6, which  
5 encourages the use of common docks. See also, 16.40.508 General  
6 Regulations 1, 2 and 3.

7 VI

8 If convenience alone were sufficient to override the San Juan  
9 County Shoreline Program, the County's carefully planned approach to  
10 piers and docks would be essentially gutted. Doing so would also  
11 conflict with State Shoreline Management Act's policy to foster  
12 planned use of the shoreline. RCW 90.58.020.

13 VII

14 The denial of the permit should be upheld. In so concluding, we  
15 recall the Hart case where the Board affirmed denial of single-family  
16 dock on this same Island:

17 It is apparent that the county has a planned, rational SMP  
18 addressing piers and docks on its shorelines.  
19 It is not the Board's function to ignore the explicit  
20 provision of the Shoreline Master Program in order to seize a  
21 result. We are convinced that the County fully intended that  
the Shoreline Master Program have this result, and conclude  
that its action should be affirmed. Hart v. San Juan County,  
SHB No. 83-7.

22 VIII

23 Any Finding of Fact which is deemed a Conclusion of Law is hereby  
24 adopted as such.

25 From these Conclusions of Law the Board enters this

26 FINAL FINDINGS OF FACT,  
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ORDER

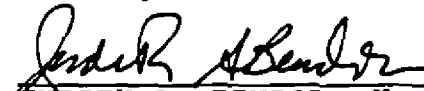
San Juan County's denial of a substantial development permit to  
Dr. Harry Kettering is AFFIRMED.

DONE this 11<sup>th</sup> day of October, 1989.

SHORELINES HEARINGS BOARD

[See Dissent]

HAROLD S. ZIMMERMAN, Presiding



JUDITH A. BENDOR, Chair



NANCY BURNETT, Member



WILLIAM E. DERRY, Member



GORDON F. CRANDALL, Member

FINAL FINDINGS OF FACT,  
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1 GENERAL REGULATIONS

- 2 1. Multiple use and expansion of existing facilities are  
3 preferred over construction of new docks and piers.
- 4 2. Mooring buoys shall be preferred over docks and piers on all  
5 marine shorelines except in the cases of port, commercial, or  
6 industrial development in the Urban Environment.
- 7 3. Moorage floats, unattached to a pier or floating dock, are  
8 preferred over docks and piers.
- 9 4. Applications for non-exempt docks and piers associated with  
10 single-family residences shall not be approved until:
- 11 a. it can be shown by the applicant that existing  
12 facilities are not adequate or feasible for use;
- 13 b. alternative moorage is not adequate or feasible;
- 14 c. the possibility of a multiple-owner or multiple-user  
15 facility has been thoroughly investigated;
- 16 d. the applicant shall have the burden of providing the  
17 information requested for items a, b, and c above, and  
18 shall provide this information in a manner prescribed  
19 by the Administrator.
- 20 e. Applicants who contemplate shared dock facilities shall  
21 submit a written agreement to be used with the proposed  
22 dock users, indicating the terms of multiple use, the  
23 proportion of share construction costs and upkeep costs  
24 and liability. This will be sent by certified mail by  
25 the applicant to his neighbors with his letter of  
26 intention and request for information on the  
27 possibility of joint use, with 30 days for response by  
certified mail.

18 V

19 The proposed extension is inconsistent with the SJCSMP in several  
20 ways:

- 21 (1.) The proposal violates Section 16.40.508 General  
22 Regulation 4 because appellant has not established that existing  
23 facilities are inadequate or infeasible.

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27 FINAL FINDINGS OF FACT,  
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1 SJCSMP 16.40.206; WAC 173-14-040. See Finding of Fact VII, above.

2 IV

3 Two sections of the San Juan County Shoreline Management Program  
4 (SJCSMP) are particularly germane to this case.

5 Section 16.40.302, Shoreline Uses, states in part:

6 GOAL

7 To assure protection of the unique character of San Juan County  
8 with its many islands while providing for uses of the shorelines  
9 which do not needlessly diminish the quality of the shoreline  
environment, and in the decision making processes which may  
affect that unique character.

10 POLICIES

11 1. Uses which protect the potential long-term benefits to the  
12 public against compromise for reasons of short-term economic gain  
or convenience should be fostered.

13 [ . . . ]

14 Section No. 16.40.508, Docks and Piers section of the SJCSMP  
15 contains the following:

16 POLICIES

17 [ . . . ]

18 6. To spare San Juan County from the so-called "porcupine  
19 effect" created by dozens of individual private docks and piers  
on the same shoreline, preference should be given to the use of  
20 private community structures in all new waterfront subdivisions.  
In general, preference should be given to the joint use of a  
21 single structure by several boat owners, as opposed to the  
construction of several individual structures.

22 [ . . . ]

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26 FINAL FINDINGS OF FACT,  
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3 DISSENTING OPINION - ZIMMERMAN  
4

5 I dissent from the majority opinion in this case because:


6 A 25-foot extension on an existing dock 17 years old can hardly  
7 be said to be a new dock; it would have insignifcnat impact on the  
8 view.

9 It would not be cumulative, because new docks are not allowed.

10 It would provide for emergencies of an older couple, safety and  
11 convenience to an extended family, and would reduce congestion and  
12 pressure on the community dock.

13 Although the exemption issue is left for another day, it did come  
14 up in post-pre-hearing settlement discussions, and was mentioned  
15 during the hearing regarding assessor valuation of the dock.

16 The appellant should have been exempt from having to get a permit  
17 by reason of having a dock extension under \$2500.  
18 (RCW 90.58.030(e)(viii)).  
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22 HAROLD S. ZIMMERMAN, Member  
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